

SUPREME COURT UPHOLDS VOLSTEAD ACT DEFINITION OF INTOXICATING LIQUORS

(Continued from Page One)

execution of the duty so imposed in the federal government."

Justice McReynolds said that the war powers of Congress possess virtually the same authority as that held by the States under their police powers, adding "it is in the opinion, the particular emergency demands the immediate discontinuance of the traffic. Congress must have the power to require such discontinuance."

A dissenting opinion, concerned by the other three associate Justices, was rendered by Justice McReynolds, who took exception to the majority's views regarding the scope of the war powers.

The minority declared the constitution should be interpreted so that no part should "suffer emasculation" by any strained or unnatural construction, by which the public rights might be jeopardized.

Briefs were filed today by the government and New Jersey authorities in connection with the court's order to show cause why original proceedings involving the validity of the eighteenth amendment and provisions of the Volstead act, forbidding its enforcement should not be brought by the State of Rhode Island, and on behalf of the Retail Liquor Dealers Association of New Jersey. A brief in support of the New Jersey case also was presented and arguments were made by H. V. Abbot for the plaintiffs and by Solicitor General King and Attorney General Thomas F. McLean, of New Jersey, in opposition. Arguments in the Rhode Island case were postponed until next Monday.

Ruppert Case the Issue.

The proceedings under which today's decision was rendered were brought by Jacob Ruppert, of New York, to enjoin the government from prohibiting the sale of 2 1/2 per cent beer. The case, which was brought under the wartime act, was ordered dismissed.

Mr. Ruppert alleged that 2 1/2 per cent beer was non-intoxicating, but that the Volstead act, by limiting the alcoholic content, prohibited the sale of beer manufactured under regulations prescribed under the Federal Food Control Act by President Wilson.

"If the war power of Congress to effectively prohibit the manufacture and sale of intoxicating liquors in order to promote the nation's efficiency in men, munitions and supplies is as full and complete as the police power of the States to effectively enforce such prohibition in order to promote the health, safety and morals of the community," said the majority opinion, "it is clear that this provision of the Volstead act is valid and has rendered immaterial the question whether plaintiffs' beer is intoxicating."

"That the federal government would, in attempting to enforce a prohibition law, be confronted with difficulties similar to those encountered by the States is obvious; and both this fact and the fact that the need of the federal government of legislation defining intoxicating liquors, as was done in the Volstead act, was clearly set forth in the reports of the House Judiciary Committee. Furthermore, the Attorney General, calling attention specifically to the claim made in respect to the 2 1/2 per cent beer, had pointed out to Congress that definition of intoxicating liquor by fixed standards was essential to the effective enforcement of the prohibition law. It is therefore clear both that Congress might reasonably have considered some legislative definition of intoxicating liquor to be essential to effective enforcement of prohibition, and also that the definition provided by the Volstead act was not an arbitrary one."

May Prevent Sale.

"The police power of a State over the liquor traffic is a single broad power to make such laws, by way of prohibition, as may be required to effectively suppress the traffic in intoxicating liquors. Likewise the traffic in intoxicating liquors, likewise the implied war power over intoxicating liquors extends to the enactment of laws which not merely prohibit the sale of intoxicating liquors, but will effectively prevent their sale. Hardship resulting from making an act take effect upon its passage is a frequent incident of permissible legislation."

"Here the loss resulting to the plaintiff from inability to use the property brewery purposes is an incident of the peculiar nature of the property, and of the war needs, which we must assume, demanded that the discontinuance of use be immediate."

"Prohibition of the manufacture of malt liquors with alcoholic content of one-half of one per cent or more is permissible, because in the opinion of Congress the war emergency demands it. If in its opinion the particular emergency demands the immediate discontinuance of the traffic, Congress must have the power to require such discontinuance."

"It is urged that the act is particularly oppressive in respect to the beer on hand, because the plaintiff was engaged in manufacturing and selling a non-intoxicating beverage expressly authorized by the President in his proclamation of December 8, 1917, and prohibited by him later, only when conservation of all food products of the country became necessary. The President afforded no basis for the claim of an equity in the plaintiff's favor. The specific permission from the President to manufacture 2 1/2 per cent beer was not on the ground that such beer was non-intoxicating, nor was it a declaration by him that this beer was non-intoxicating. The permission extended to all 'ale and porter,' which, every one knows, are intoxicating liquors. This permission to make 2 1/2 per cent beer was withdrawn December 1, 1919, by proclamation of September 15, 1915, and no permission to manufacture specifically 2 1/2 per cent beer was ever thereafter given by the President. His later proclamation (March 4, 1919) merely limited the prohibition act to the use of foodstuffs to use in the production of 'intoxicating liquors.'"

"Whether 2 1/2 per cent beer was intoxicating was thus left by the President, not only without a decision, but without even an intimation. The statement of plaintiff that the 2 1/2 per cent beer was manufactured under permission of the President is wholly unfounded. It was not until July 1, 1919, when the wartime prohibition act became operative in this respect, that there was any prohibition of the sale of any liquors. So far as appears, all the beer which plaintiff had on hand at the time of the passage of the Volstead act was manufactured by the plaintiff long after the President had ceased to have any authority to forbid or to permit."

Power of Congress the Issue.

Justice McReynolds, in the dissenting opinion, said the problem is not merely concerned the power of Congress to enact a declaration of war, not when active hostilities had ended and demobilization had been completed.

"The federal government had only those powers granted by the constitution," he said. "The Eighteenth Amendment, not having become effective, it has no general power to prohibit the manufacture or sale of liquors."

After a statement of the argument, the opinion said that for sixty years the prohibition case had been regarded as a



JAMES C. McREYNOLDS

PHOTO BY CALVERT REID

splendid exemplification of the protection which this court must extend in time of war to rights guaranteed by the constitution, and also as decisive of its power to ascertain whether actual military necessity justified interference with such rights.

"The doctrine then clearly is that, in such a case, the government is not bound to show that the prohibition is necessary to the national health, safety and morals, but that it is sufficient to show that the prohibition is necessary to the national health, safety and morals."

"I can see no reasonable relationship," Justice McReynolds said, "between the war declared in 1917 or the demobilization following (both of which in essence if not by formal announcement terminated before October 1, 1919), or restoration of peace (where quiet had already descended upon us), and destruction of the value of complainant's beverage, solemnly admitted in this record to be non-intoxicating and which it manufactured, held and desired to sell in strict compliance with the laws of New York. Nor can I discover any substantial ground for holding that such destruction could probably aid in an appreciable way the enforcement of any prohibition law then within the competency of Congress to enact. It is not enough merely to assert such a probability; it must arise from the facts."

New Orleans and Baltimore Cases.

Justice Day in the decision in the New Orleans and Baltimore cases said: "The declared purpose of Congress was to conserve the nation's man power and increase efficiency in producing war essentials; and it accordingly undertook to prohibit the manufacture of intoxicating liquors whose use might interfere with the consumption of that purpose. Other provisions of the act lend support to this view. The sale and withdrawal from bond of distilled spirits (always intoxicating) were declared unlawful after June 30, 1919; their manufacture already had been prohibited. The sale of beer, wine and other intoxicating malt or vinous liquors was prohibited after the same date and the importation of all such liquors, and also of distilled liquors, was made immediately unlawful."

"The fact that the Treasury Department may have declared taxable under many revenue acts all beer containing one-half of one per cent of alcohol is not important. Such rulings did not turn upon the latest character of the liquor, but upon other considerations. Administrative rulings cannot add to the terms of an act of Congress and make criminal that which such laws leave untouched. "Furthermore, we must remember in considering an act of Congress that a construction which might render it unconstitutional is to be avoided. We held in *Lewis and Clark Distilling Co. v. United States*, 251 U. S. 18, that the war power of Congress as applied to the situation outlined in the opinion in this case enabled it to prohibit the sale of intoxicating liquor for beverage purposes. The question was neither made nor decided as to whether Congress could prohibit even in time of war the manufacture and sale of non-intoxicating beverages. "We cannot say, as a matter of law, that a beverage containing not more than one-half of one per cent of alcohol is intoxicating, and as neither indictments nor charges it follows that the court below in charges it follows that the court below in each of the cases correctly construed the act of Congress, and the judgments are affirmed."

Wood Alcohol "Whiskey" Kills Five in Louisville in Month.

LOUISVILLE, Ky., Monday.—Two negroes died here late last night and two other persons were reported seriously ill as a result of drinking wood alcohol "whiskey" purchased from a "bootlegger." Coroner Carter revealed that wood alcohol taken as whiskey has caused five deaths here within a month.

Britain's Brewers Begin Campaign to Beat Prohibition

By TRUMAN H. TALLEY,
Special Correspondent of the Herald.

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(Special Cable to the Herald.)

LONDON, Monday.

News from the United States describing the huge campaign fund, which the prohibitionists are said to be raising to make the whole world dry, beginning with England, evokes caustic comment here. There is no doubting that England accepts the proposal as genuine and even likely to succeed eventually, but being forewarned England is forearmed and already is organizing on a vast scale to combat so-called "moneyfooting."

Brewers and distillers have announced an intensive campaign of education among workmen, while funds without end are being made available to resist American or British dry legislation. The Westminster Gazette says editorially "the success of the prohibition movement here is not likely to be promoted by the announcement that the American Anti-Saloon League intends running a \$50,000,000 campaign in England. The disgraceful outrage on Johnson certainly won sympathy for that magnanimous propagandist, but this lavish collection of American funds to impose prohibition on the civilized world, beginning here, will work the other way. American enthusiasts are likely to be asked why they cannot set their abundant spare cash and energies to propaganda for American ratification of the treaty and covenant, which seems to be a greater ideal as well as a more immediately pressing and practicable task."

GETS STIFFER COURT WILL KILL BY AMENDMENT RED "CHANCELLOR" IS SEIZED HERE IN RADICAL ROUND-UP

(Continued from Page One)

executive department of the government of the United States, including the State, War and Navy branches thereof and all commissions and boards, or by merely to carry into effect the wartime measures."

The case is pending, Mr. Buckner said, and will be called for a hearing in due time. The court then will be asked to define not only what is intoxicating, which has not yet been done, but also to determine if the eighteenth amendment ever was adopted by the United States under proper submission.

Russell H. Landale, president of the American Grain and Mill Company, issued a statement in which he said:

"In view of the development and perfection of near-beers during the wartime prohibition period and since the formation of the American Grain and Mill Company, which developed near-beers, I am not at all surprised that the government should have found a ready market for such a product, the prospects for the malting business are most encouraging."

"All the largest and best brewing concerns in the country, after exhausting search and experiment in the brewing of near-beers, have decided to continue in business, and are wisely advertising their new product, which they claim confidently will more than please their old customers and the vast number of those others who must now choose between insipid soft drinks and the finest near-beers, which are similar in appearance, smell and taste to the old-time favorite lagers, Pilseners, Budweisers, Stouts, etc."

Will Test Its Validity.

Colonel Jacob H. Ruppert, of the Jacob Ruppert Brewing Company, said that the decision was not in the least surprising to him, "in view of the way things were going in this country to-day."

"Of course," he said, "we must accept this latest ruling of the Supreme Court as philosophically as possible, but we shall test the validity of the constitutional amendment later."

Thomas D. O'Connor, secretary of the New York State Liquor Dealers' Association, said: "Our association will hold a meeting tomorrow afternoon at Terrace Garden, and at that time we may have some announcement to make about the future policy of members. The association represents has about \$23,000 worth of liquors in bond, and now the situation shapes itself so that it appears we cannot take these liquors out of bond, let alone sell them, and secure at least our investment back. If that is justice, I will have to be shown. All we can do now is to wait for a test of the validity of the constitutional amendment."

"We are optimistic and believe we will win. I believe that peace will be declared shortly and that we can again manufacture beer," said Christian W. Feigenbaum, president of the United States Brewers' Association, yesterday in Newark.

"Judge McReynolds, Clarke, Day and Vanderventer decided in our favor. Decisions in the Baltimore and New Orleans cases were in our favor. The substance of this is that the sale of beer up to October 1, 1919, was legal, if it was not intoxicating. After that the Volstead law prevailed."

Mr. Feigenbaum said that, so far as he knew, the brewers had made no plans for the immediate future, but he intimated that a conference would be held soon, and that something definite might be decided upon.

Anderson Scores Republicans.

This was the comment made by William H. Anderson, State superintendent of the Anti-Saloon League of New York: "Once more the Supreme Court of the United States has demonstrated to the public that the Honorable Elihu Root is losing his grip as a lawyer, or else is not very scrupulous in his choice of clients. The decision of the highest court of the land that even 'root beer,' as the 2 1/2 per cent concoction has come to be known, is illegal, has emphasized the folly of Republican leaders in their overconfidence of Republican victory this year, affronting the moral element of State and nation by putting forward the chief attorney of the German brewers in America to take a prominent part in the selection of the Republican candidate for President."

"If Congress has the power to prohibit 2 1/2 per cent beer under war prohibition there can be no doubt of its power to fix the limit under the amendment, and the Supreme Court has held that it has the power. We presume the liquor interests will insist upon getting a decision upon the prohibition amendment and collateral questions from the Supreme Court, but, so far as material legal relief is concerned, they are done. There is nothing left for them except to repeal the amendment or to capture Congress and repeal or pervert the enforcement law which carries it into effect. In this undertaking we wish them joy."

Death Penalty on Sedition Provided in Graham's Bill

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The Congress of the United States, including every member of the Senate and House of Representatives; or by the judges of the courts of the United States, and all of the officers, clerks, and marshals of the United States connected with the administration of justice, shall be guilty of sedition and on conviction shall be imprisoned for not more than twenty years, and fined not more than twenty thousand dollars, either or both, in the discretion of the court; but if any overt act done or performed in doing or attempting to do anything herein forbidden shall result or cause the death of an innocent person, the punishment shall be death, or, in the discretion of the court, fine and imprisonment as herein on this section provided."

"The bill also reaches those who, while not actually engaging in any of the practices forbidden, aid and encourage these activities by contributing financially to their support. It prevents the printing or circulation of seditious literature and the display of red flags at 'any meeting, parade or in any other public place.' It makes seditious literature non-markable, and also makes the transportation of seditious literature unlawful, and punishable as a felony. It prevents unlawful assembly, and enlarges the scope of the present alien sedition laws by providing that aliens shall be punished for violation of laws, and then shall be deported with no power of re-entry. Sweeping restrictions are also placed upon unnaturalized persons seeking to become citizens who violate the sedition laws, barring them forever from citizenship."

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been connected with the Russian Federation of Labor. A few months ago Dr. Michael Mialig, when questioned about the records, books and papers of the radical organization, referred headquarters to Tytyerowski, and since then the latter has been sought. Chief Flynn congratulated the detectives and agent on the arrest.

Nathan Schuch was arrested in his home, in Monroe street. He made no protest. He boasted that he was a member of the Communist and revolutionist parties and was thoroughly in sympathy with all their doctrines. He was sent to Ellis Island.

Harry Rosenbaum, of No. 23 Market street, and Morris Untrecht, of No. 83 Columbia street, also were arrested.

Mrs. John Brophy, of No. 83 West Twelfth street, was arrested at her home. She produced papers to show that she was a citizen of this country. After she had been questioned by Mr. Scully it was decided to release her and turn the evidence over to the State authorities.

The women attaches of the Department of Justice volunteered to remain on duty during the night to see that the prisoners of their sex had proper attention.

One of the most important arrests in the round-up was that of Oscar Tytyerowski, State Executive Secretary of the Communist party. He was arrested by M. Davis, of the Department of Justice, and Detectives Hauptmann and Grendel, of the Bomb Squad, at No. 1367 Fulton avenue, the Bronx, where he was living with his wife under the name of Smith.

When the detectives entered the place, Tytyerowski first denied his identity. When he was outside, however, he readily admitted it.

"I didn't want my wife to know who I was," he said.

All of Tytyerowski's records were seized last Friday night in the raid on the twenty-five anarchists' hideout. Tytyerowski is an alien and will be held for deportation.

In the lower east and west sides last night detectives arrested seventeen persons for whom deportation warrants had been issued and took them to Police Headquarters.

"I think the 'Reds' have taken to cover; up to this hour about twenty-five houses have been raided by the police and federal agents, and some of them have been taken to the police station for questioning."

The department agents went out through the city in five big army trucks, picking up the prisoners at the various station houses. The process of collection was much slower than on Friday night because most of the prisoners were first found at their homes and then taken to the station houses, from where they were transferred to the Department of Justice headquarters.

Gregory Weinstein Arrested.

Gregory Weinstein, "chancellor" of the Martens Soviet Bureau was arrested earlier in the day by agents of the Red squad of the Department of Justice under Charles F. Smith, a Russian "Red" leader connected with the revolutionary movement in this country for several years. He is a Russian Jew and an escaped exile from Siberia.

George F. Lamb, division superintendent of the Department of Justice described Weinstein as "a most violent and dangerous Bolshevik." The alleged "chancellor" was taken in custody as he was leaving the building at No. 110 West Fortieth street and a deportation warrant was served. After being taken to the office of the Department of Justice at No. 21 Park row he declined to answer any questions and was immediately sent to Ellis Island. Weinstein is the most important man in the Communist party next to Martens, said Mr. Lamb. "He came to this country with Trotsky and was associated with him for some time in the publication of the New York 'Red' paper. After the war went back to Russia and seized control of the government with Lenin. Weinstein became editor of Novy Mir and directed revolutionary activities here. As Martens' 'chief of staff' he is known to know more about radical activities in this country than any one except the so-called 'ambassador' himself."

According to information in possession of Scully's Red Squad, Weinstein is the chief of the inner circle of intrigue and the directing hand of the propaganda ring that has spent huge sums to spread discontent and cause industrial unrest. The details of the government's case against this man cannot be revealed at this time, but it is known that the authorities look upon him as one of the most dangerous revolutionists in America.

Last night his apartment was searched and many documents in Russian seized. They were taken to the Department of Justice headquarters for translation. One was a communication addressed to the Russian Workers of America in which the United States was assailed for deporting Berkman, Goldman and others. This letter contained an appeal for assistance in fighting the wholesale deportations and read: "We want your moral and material support in whatever action we decide to take."

Refused to Tell of Documents.

When the bulky piles from Weinstein's home were being examined an inquiry was made regarding whether any communications from Soviet Russia to Martens were among them. The authorities declined to say. When Martens was a witness before the Lusk Committee he said that his "diplomatic correspondence" had been removed to a secret hiding place and he refused to reveal where it was concealed. After the documents have been translated they will be turned over to the immigration authorities.

"Ambassador" Martens, the German enemy alien, who has spent much time explaining that he is here on a legal mission, is still a fugitive. The Lusk Committee

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has been unable to find him for service of the order to show cause why he should not be adjudged in contempt for failure to answer the questions of the committee. It was said that he is in Washington.

Victor Wolodkin, who said that he lived at No. 605 West 125th street, walked into the Department of Justice offices yesterday to inquire about Weinstein. He was welcomed by Mr. Scully and Joseph Tucker, of the Red Squad, who were looking for him with a deportation warrant. Wolodkin came here in 1913 from Russia and has since been identified with the revolutionary movement. He was manager of Novy Mir for eight months in 1916, but returned because this ultra radical publication was not radical enough for him. After being interrogated by Scully, Tucker and Detective Sergeant James J. Gegan, of the Police Bomb Squad, he was sent to Ellis Island.

Arrests in Counterfeit Plot.

It was learned last night that arrests already have been made in the Bolshevik counterfeiting plot to flood the United States with spurious currency. A thick veil of official secrecy has been thrown about the arrests which were made in the West and no details are available. The authorities said that some arrests had been made, but declined to discuss the matter further. Scotland Yard men and operatives of the French Secret Service in this country are co-operating with the government agents in the case.

There are over four hundred and fifty Communists held on Ellis Island from the metropolitan district. The immigration authorities stated that they did not know when the aliens arrested in the West would begin to arrive nor how they were going to accommodate them when they do come. The new arrivals are being kept away from the twenty-five anarchists' hideout so that they will not be able to contact them. The cases had not been completed.

Samuel A. Barger, Deputy Attorney General, with members of the Lusk Committee yesterday obtained the papers and

documents in the safe of the printing establishment, at No. 6 Third street, where the Communist World, Novy Mir

EVERY "RED" OFFICIAL
IN BOSTON CAUGHT

BOSTON, Mass., Monday.—Department of Justice officials announced tonight that individual arrests on federal warrants had increased to more than one hundred the number of alleged radicals taken in this city in the raids that began last Friday night. Every officer of the Communist party in Boston was caught, the officials said.

Members of the staff of the Strahneck, said to be the official publication of the Lettish Federation of the Communist party, also were arrested.

Government investigators arrived today at Deer Island, where more than four hundred of New England's alleged radicals are being held, and preliminary investigations were begun. It was said, however, that examinations probably would not start until Wednesday. Department of Justice agents were busy this afternoon preparing affidavits stating that prisoners are aliens and members of the Communist party.

HAYWOOD RELEASED ON BAIL IN CHICAGO

CHICAGO, Ill., Monday.—William D. Haywood, general secretary of the I. W. W., released from Leavenworth Penitentiary some time ago on bond, surrendered to State's Attorney Macley Hoynes today to answer to a charge of violating the new State law against syndicalism.

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Philadelphia Agents Get Three Alleged Red Leaders at Atlantic City.

PHILADELPHIA, Pa., Monday.—Three additional arrests of alleged radicals were made today by agents of the Department of Justice at Atlantic City. The men will be brought to this city for examination. One was an organizer for the Communist party, according to the police, one secretary of the Atlantic City branch of the organization, and the third a prominent member of the party. Federal agents said they still have forty-four warrants to serve on alleged "Reds." More arrests are expected tomorrow.

Joseph V. Stilton, formerly an editor of a Lithuanian newspaper in this city and convicted of violating the Espionage act, has forfeited his bail of \$10,000. He was sentenced to three years in the Atlanta Penitentiary and was released pending appeal to the higher courts, which was lost.

Trenton Mills Discharge Men Taken in "Red" Raids.

TRENTON, N. J., Monday.—As a precautionary measure to prevent any outbreak at their mills officials of the J. A. Roebeling's Sons Company here, have dismissed the dozen or more of their employees who were picked up in the "Red" raids in this section on last Friday night. These men were later released by department of Justice men. Most of them are citizens and immune from deportation, but there were reports about the city tonight that some of them might be arrested on disloyalty charges and prosecuted under the State laws.

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